

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

ORIGINAL

77-1085

To be argued by
VICTOR J. HERWITZ, ESQ.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

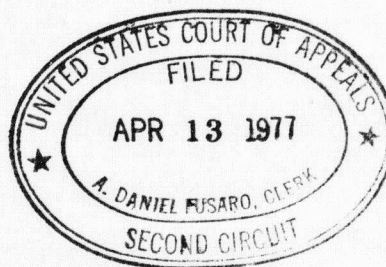
-v.-

JUAN ANTONIO ALVAREZ,
SIDNEY FOSTER, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE DEFENDANT-APPELLANT,
SIDNEY FOSTER



VICTOR J. HERWITZ, ESQ.
Attorney for Defendant-Appellant,
SIDNEY FOSTER

TABLE OF CONTENTS

	<u>Page</u>
Preliminary Statement.	1
The Questions Presented.	2
The Facts.	2
The Government's Case	3
A. Brown's Testimony	4
B. Parker's Testimony.	7
C. Tompkins' Testimony	9
The Defense	11
Argument:	
<u>POINT I.</u>	12
TOMPKINS' TESTIMONY RELATIVE TO THE 1968 BARBER SHOP TRANSACTION WAS INADMISSIBLE AND ITS ADMISSION WAS REVERSIBLE ERROR.	
The Testimony Complained Of.	15
The Testimony Was Inadmissible	21
<u>POINT II.</u>	23
DEFENDANT-APPELLANT FOSTER ADOPTS ALL RELEVANT POINTS MADE BY HIS CO-APPELLANTS.	
<u>CONCLUSION</u>	24
FOR ALL THE REASONS OUTLINED ABOVE AND IN THE BRIEFS OF THE CO-APPELLANTS, DEFENDANT-APPELLANT FOSTER'S JUDGMENT OF CONVICTION SHOULD BE REVERSED.	

TABLE OF AUTHORITIES

Page

Statutes:

21 U.S.C. §§173, 174, 812, 841(a)(1), 841(b)(1)(A), 951, 952 and 960.	1-3, 12
18 U.S.C. §2.	3

Rules:

Federal Rules of Evidence, Rules 602, 801(c) and 802.	22
--	----

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 77-1085

UNITED STATES OF AMERICA,

Appellee,

-v.-

JUAN ANTONIO ALVAREZ,
SIDNEY FOSTER, et al.,

Defendants-Appellants.

BRIEF FOR DEFENDANT-APPELLANT,
SIDNEY FOSTER

Preliminary Statement

SIDNEY FOSTER, one of the defendant-appellants herein, appeals from a judgment of conviction entered on January 21, 1977 in the United States District Court for the Southern District of New York, after a three month multi-defendant trial before the Hon. Richard Owen, United States District Court Judge, and a jury. FOSTER was convicted of count 1 of the indictment, which charged him with conspiracy to violate the narcotics laws of the United States, specifically, Sections 173, 174, 812, 841(a)(1) and

841(b)(1)(A), 951, 952 and 960 of Title 21, United States Code. The jury, by its verdict, found that FOSTER had entered the conspiracy prior to May 1, 1971, in violation of former Sections 173, 174 of Title 21, and he was mandatorily sentenced thereunder to a term of imprisonment for a period of ten years and placed on special parole for a period of three years to commence upon the expiration of his confinement.

The Questions Presented

In this brief FOSTER will argue that the trial court committed reversible error in permitting, over FOSTER's objection, the hearsay and otherwise inadmissible evidence of the government witness, Ella Mae Tompkins. Insofar as they may be applicable to him, FOSTER adopts the arguments to be advanced by his co-appellants.

The Facts

FOSTER was originally charged with not only the conspiracy count upon which, as stated above, he was convicted, but also two substantive counts, originally numbered count 21 (renumbered count 18) and count 23. The first of these substantive counts (count 18) alleged that:

In and about December, 1972, in the Southern District of New York, William

Hightower, and Sidney Foster, a/k/a "Chinch", the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine. (Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

The second of these substantive counts (count 23) charged that the same offense had been committed in the same district in and about May, 1973 by the same defendants, Hightower and FOSTER, and an additional defendant, Michael Parker.*

Judge Owen granted the motions of the defendants Hightower and FOSTER to dismiss count 23, and the jury found the defendants Hightower and FOSTER not guilty of count 18.

The Government's Case

The evidence relied upon by the government to connect FOSTER with the conspiracy consisted of the testimony of three witnesses: John T. (Jack) Brown, Michael Parker, and Ella Mae Tompkins. The substance of their testimony, insofar as it was applicable to FOSTER, is set

*Parker's case was severed before trial and he was one of the principal government witnesses.

forth below:

A. Brown's Testimony

Brown testified that around July or August, 1968 he received a telephone call in New York from the defendant William Hightower, who was in Washington, D.C. (Tr. 1156; Tr. 2104-05).^{*} According to Brown, Hightower was then one of his drug customers. During the conversation, Hightower put FOSTER on the wire. FOSTER said that "he was with Hightower now and they were together and that he (FOSTER) probably would be seeing (Brown) in the near future" (Tr. 1156). Hightower then got back on the phone and told Brown "that he was kind of busy in his (clothing) store" and he "wanted to know if it was all right, if he would send Chinch (FOSTER) up on occasions to pick up either the heroin, cocaine that he wanted" (Tr. 1156-1157). Brown, who had first met FOSTER in Washington many years before that, told Hightower that it was "all right" with him if FOSTER picked up the drugs for Hightower (Tr. 1157).

Brown further testified, that, after the above-mentioned conversation, FOSTER came to New York "twice a

^{*}Numerals in parentheses preceded by the letters "Tr." refer to page numbers in the trial transcript.

month", until, in the latter part of 1969, he started coming every week (Tr. 1157-1158). Hightower customarily called Brown beforehand to tell him that FOSTER would be leaving Washington in the morning by train and would be arriving at about noon (Tr. 1158). FOSTER, upon his arrival at Penn Station, would either call Brown at his home at 180 West End Avenue to exchange cash for drugs at Brown's home, or they would meet at a restaurant on 56th Street and Ninth Avenue (Tr. 1159). FOSTER would wait at the restaurant while Brown went to his "stash" in an apartment on 56th Street to obtain the drugs, then Brown would go back to the restaurant, and give the drugs to FOSTER, who would then return to Washington (Tr. 1159).

Brown further testified that sometime in 1970, "after (FOSTER) had accumulated a bankroll of his own," he asked Brown "if it was all right if he picked up a package for himself without (Brown) telling Hightower what he was doing." (Tr. 1160). Brown told him he had no objection and thereafter "every time (FOSTER) would come up for Hightower he would come up for himself" and Brown would sell him 1/8 or 1/4 kilos of heroin or cocaine." (id.).

Concerning the time periods during which he had dealings in drugs with FOSTER and Hightower, Brown testified as follows (Tr. 1160-1161):

Q. Mr. Brown, from what period of time to what period of time were you selling drugs to Hightower and Chinch, either directly or indirectly?

A. From 1966 with Hightower, up until 1968 when Chinch came into the picture. After that period I sold them both up until 1972 when Chinch stopped but I continued selling heroin or coke to Hightower through my son-in-law Michael and through Lois (Sampson).

Q. Which part of 1972?

A. The latter part when I moved to Orangeburg.

* * *

Q. When did you move to Orangeburg?

A. In November of 1972.

Later, Brown further testified, however, that in May, 1974, while he was "on the lam" in Miami, Florida, he had given some cocaine to his son-in-law Michael Parker who told him he was going to take it back to Washington and sell it to Hightower and "Chinch" (Tr. 1401).

B. Parker's Testimony

Parker, Brown's son-in-law, testified that he and his family had moved from the Washington, D.C. area to New York City in February, 1971, and that they had continued to live there until June, 1972 (Tr. 3292-3293); that during that period Parker had seen FOSTER "maybe four times" visiting Brown at two of the latter's apartments, 180 West End Avenue and 10 West 60th Street in Manhattan (Tr. 3410); that FOSTER usually arrived around twelve to one o'clock in the afternoon and left no later than three (Tr. 3470); but that, although Parker had begun to help Brown in his narcotics business in around April or May, 1971 (Tr. 3500), and Brown had told Parker in the summer or fall of 1971 that FOSTER was getting cocaine from Brown for himself and Hightower (Tr. 3411), Parker never saw Brown give FOSTER any narcotics, nor did he see FOSTER give Brown any money (Tr. 3813). Parker stated, however, that FOSTER, when visiting Brown, carried a black cosmetics or toiletry bag with a little handle on it which zipped up the middle (Tr. 3411-3412).

Parker further testified that one day in the latter part of November, 1972, he was present at Carol

Cuffee's apartment at 200 West 90th Street in Manhattan (one of the places where Brown made meetings in connection with his narcotics business) (Tr. 3427-3428); that Hightower and FOSTER met Brown there by appointment and had each separately gone into a bedroom with Brown for fifteen or twenty minutes (Tr. 3432); that when Hightower came out of the bedroom he was stuffing a package wrapped in tin foil into his pants (Tr. 3432); that after Hightower and FOSTER left the apartment Brown told Parker that he had given each of them one or two 1/8 kilos of cocaine and that they each wanted separate packages because FOSTER was breaking away from Hightower (Tr. 3422-3433).

(The above-stated alleged occurrence at Carol Cuffee's apartment was the subject of count eighteen as to which, as previously stated, both Hightower and FOSTER were found not guilty by the jury.)

In April, 1973, according to Parker, he had, at Brown's request, taken five to eight 1/8 kilos of cocaine from Brown in New York to FOSTER and Hightower in Washington over a four to six week period (Tr. 3518-3519). Of the money received from them for the drugs, Parker kept \$1500 and gave the rest to Brown (Tr. 3520-3521).

(The above-stated alleged occurrence was the subject of count twenty-three (original number), which was dismissed by the trial judge upon FOSTER's motion made at the end of the Government's case.)

Parker further testified that in March, 1974, he had received 1/2 kilo of cocaine from Brown, who was then in Miami, and upon his instructions Parker had sold the drugs in equal parts to Hightower and FOSTER in Washington for \$3300 per 1/8 kilo (Tr. 3554-3556). In June, 1974, Parker said, there had been a similar sale of drugs to Hightower and FOSTER, after Parker had received them from Brown in Miami (Tr. 3558-3572).

C. Tompkins' Testimony

The third and final witness who gave any testimony directly applicable to FOSTER was Ella Mae Tompkins. She testified as to two alleged occurrences, one in 1968 and the other in 1974 (Tr. 5764-5776; 5784; 5787-5788).

As to the alleged occurrence, in 1968, Tompkins testified, over FOSTER's objections, in substance, as follows: that, one day "during the time of the '68 riot," she was in the barber shop of George Willis, one of her "ex common law husbands," located at 1601 7th Street in

Washington, D.C. (Tr. 5766-5770); that she had gone there to get some heroin from Willis but that he didn't have any (Tr. 5770-5771); that Hightower and FOSTER came down the street, they didn't enter the barber shop, but they called to Willis in the shop who then went outside and talked to them (Tr. 5771-5772); and that about five or ten minutes later, after Willis had completed cutting the hair of a customer he had in the chair, Willis gave Tompkins twenty capsules of heroin (Tr. 5772-5773).

As to the 1974 incident, Tompkins testified that late in that year, "approximately" in October, she and another ex-common law husband, Richard Conte (since deceased), had gone by car to 4th and N Streets in Washington, D.C. (Tr. 5784); that Conte got out of the car, went to the corner and talked to FOSTER (Tr. 5787-5788); and that when Conte returned to the car he gave Tompkins a package containing a half ounce of cocaine (Tr. 5788). Tompkins, who stated that she had seen Conte the whole time that he was talking to FOSTER (Tr. 5787), didn't claim that she had seen any passage of money or narcotics between Conte and FOSTER. She admitted that she had never given any money to FOSTER or received any drugs from him (Tr. 5835).

The Defense

The defense consisted of the following stipulation entered into between the Government and FOSTER (Tr. 7244-7245):

MR. HERWITZ: May I now announce a stipulation that the Government agreed to before?

THE COURT: You may.

MR. HERWITZ: It is hereby stipulated and agreed between the United States Government and the defendant Sidney Foster that during the year 1968 up to February 1969 the defendant Sidney Foster was not a resident of the City of Washington, D.C. and at no time during that period was the defendant Foster in either Washington, D.C. or New York City.

It is further stipulated that after February 1969 Mr. Foster was a resident of Washington, D.C.

THE COURT: Very good.

Argument

POINT I.

TOMPKINS' TESTIMONY RELATIVE TO THE 1968 BARBER SHOP TRANSACTION WAS INADMISSIBLE AND ITS ADMISSION WAS REVERSIBLE ERROR.

As noted above at page 2, the jury, by its verdict, necessarily found that FOSTER had entered the conspiracy prior to May 1, 1971 in violation of 21 U.S.C. former Sections 173 and 174. Pursuant to those provisions, he was mandatorily sentenced to a term of imprisonment of ten years and placed on special parole for a period of three years upon the expiration of his confinement. Because the jury found FOSTER not guilty of the one substantive count which they were permitted to consider, which charged a crime committed after May 1, 1971, it is impossible to know how the jury would have voted on the conspiracy charge if it had found that he had not entered into the conspiracy prior to May 1, 1971.

Of the three witnesses who connected FOSTER with the conspiracy, only two gave testimony which tied FOSTER to the conspiracy prior to May 1, 1971.* Brown was the

*Although Parker gave testimony concerning events which took place sometime within a period February, 1971 to June, 1972, see page 7, supra, it could not be claimed that the testimony was sufficient to connect FOSTER to the conspiracy prior to May 1, 1971 -- there was simply no testimony by Parker to any dealings with FOSTER prior to that date.

first such witness.

One of the major events that Brown testified to, however, occurred, so he said, in July or August, 1968 (Tr. 1156; 2104-05). But, the Government stipulated that FOSTER was neither in Washington, D.C. or New York throughout the year 1968, until February, 1969 (Tr. 7244-7245). Further, no one was convicted of the conspiracy charges solely on Brown's testimony.

The only corroboration of Brown's testimony relative to FOSTER's connection with the conspiracy prior to May 1, 1971, therefore, was that of Tompkins. In fact, as against FOSTER, as the Government asserted in its summation, Tompkins was a key witness (Tr. 7662-7665):

You don't have to take Brown's word for this by himself. His testimony is corroborated by the testimony of two other witnesses. . . .

There is also testimony from a completely independent source, Estelle Tompkins, Ella Mae Tompkins and you will recall she is the witness who was a drug addict and supported herself by shoplifting. . . .

You heard the testimony of Estelle Tompkins, that she has no agreement with the government, no cases pending, she's not in jail, she is trying to straight (sic) out a life that has been totally absorbed

with narcotics for 30 years, she is in a methadone program, she has a promise from the government, that's true, that the government will attempt to find a job for her some place in Washington, in the Washington area. You heard her testify that she knew Chinch and Hightower in the 1940s, they're friends, not the government's and she testified that in 1968, she was at the barber shop of her boyfriend, George Willis, in Washington, D.C. to get some heroin. He didn't have any. Chinch and Hightower came to the barber shop, they didn't come in. Willis went out, returned and had with him heroin.

This totally independent corroboration of the business partnership of Hightower and Chinch to sell drugs. You have heard testimony this morning read into evidence that Chinch was not a resident of Washington, D.C. in '68 but he did return to Washington in February of 1969, and you will have to resolve this problem as to whether Brown's testimony and Estelle Tompkins' testimony, that they both spoke to and were dealing with Chinch in 1968 is a lie, two independent witnesses who never spoke to each other, coming in for no motive that has been demonstrated, to give false testimony about Chinch or whether the discrepancy between 1968 and February of 1969 is an important, material discrepancy. That's exactly your function as jurors to apply your common sense to that kind of problem in the case.

It may thus be seen that if Tompkins' testimony relative to occurrences prior to May 1, 1971 was erroneously admitted, the prejudice caused thereby would make the error reversible.

The Testimony Complained Of

While the cast of characters at the 1968 barber shop incident was unfolding, counsel for FOSTER objected, at which time the Court and Government had the following discussion (Tr. 5766-5767):

THE COURT: Miss Cushman, I think counsel are concerned and I'm a little bit concerned that you say who was asked that she's going to chuck into the transcript all kinds of input. Did she have some hearsay, some not hearsay, some relevant, some irrelevant, some possibly prejudicial, and some possibly probative, but I join with counsel and concern as to what kind of an answer that opens the door to.

MS. CUSHMAN: Well, what she would testify, your Honor, is that George Willis is a person who for two years she lived, one of her common law husbands, but after that time she continued to see him when she was in Washington, and purchase heroin from him, and that she was present in his barber shop. She went there to purchase heroin.

He had none, Chinch and Hightower on one occasion and Hightower on several occasions brought a package to the barber shop and she used some of the contents of that package and found that they were heroin.

She purchased them from George Willis after seeing Hightower or Chinch and Hightower bring them to the barber shop.

Thus, it was the Government's representation that Tompkins would testify to actually having seen Chinch and Hightower bring drugs that she eventually used to Willis at the barber shop.

Aroused by a lack of 3500 material relative to any such testimony, counsel for FOSTER made his position known as follows (Tr. 5768):

MR. HERWITZ: Now, relative to this there is nothing in the 3500 material which I read this morning, and I may be incorrect, to indicate that she had previously stated that she had seen Chinch give a package to this George Willis and that subsequently she had purchased the package and tested it and it was heroin.

Now is this something new or did I miss it in the 3500 material?

THE COURT: I don't know.

MR. HERWITZ: Can I ask whether or not this witness is going to give any competent evidence relative to that?

THE COURT: Well, Mr. Herwitz, all I can say is that the Government has made a representation of what she's going to testify to. It seems to me that representation makes that testimony competent, proper and probative and that --

MR. HERWITZ: I'm just going on record, your Honor, if they don't carry that out that I would consider it highly prejudicial and make appropriate motions with respect thereto.

Tompkins was permitted to testify to the incident until it became apparent that the testimony was differing considerably from that which the Government had represented it would be, whereupon counsel objected as follows (Tr. 5772):

MR. HERWITZ: I object to what George had unless any of the defendants were present in any of the conversations or when something happened.

The testimony was accepted subject to a motion to strike (Tr. 5572), which counsel soon made (Tr. 5573):

MR. HERWITZ: I move to strike out the answer as not binding on the defendant Foster. . . .

I like to couple that motion to move to strike out the previous testimony of the witness as to what George Willis had told her that he didn't have any narcotics or heroin previously, your Honor, it being hearsay, and not binding on the defendant Foster.

The Court, however, again accepted the testimony (Tr. 5773).

Specifically, Tompkins was permitted to testify as follows (Tr. 5770-5773):

BY MS. CUSHMAN:

Q Mrs. Tompkins, just before the break, you mentioned a man named George Willis. Can you tell us who he is, please?

A George Willis was an ex-common law husband of mine.

Q Of yours, did you say?

A Yes.

Q During what period of time did you live with him?

A In the late '50s: '57, '58, '59.

Q We are talking now about 1968. In what connection did you know him in 1968?

A Well, we had remained friends over a period of years, during the time he was in the street we were friends.

Q You mentioned you were in his barber shop. When was it, what part of 1968?

A It was during the time of the '68 riot.

Q And this is in Washington, D.C.?

A Yes.

Q What were you doing in his barber shop that day?

A Well, on that occasion I had gone to get some drugs from George.

Q What kind of drugs?

A Heroin.

Q By the way, at this time you were still living in Maryland, and commuting back and forth from New York?

A Yes.

Q And at this particular time you were in Washington, D.C.?

A Yes.

Q And what happened?

MR. HERWITZ: If your Honor please, I object to the question as put.

Q What, if anything, happened?

THE COURT: Overruled. Go ahead.

A I had to wait for drugs from George and he was out at that time.

Q When you say he was "out", what do you mean?

A He didn't have anything.

Q He didn't have any heroin?

A Yes.

Q And then what happened?

A During that time, Hightower and Chinch came down the street. They did not come to the barber shop at all. They called George in the barber shop and talked with George.

Q Then what happened?

A Then he left and later on George had --

MR. HERWITZ: I object to what George had unless any of the defendants were present in any of the conversations or when something happened.

THE COURT: At this point I will take it subject to motion to strike. Overruled.

Q Mrs. Tompkins, so we are clear, you were in the barber shop, is that correct?

A Right.

Q And Mr. Willis was in the barber shop?

A Right.

Q And is it correct that --

MR. HERWITZ: I object to the leading, your Honor.

THE COURT: Sustained.

Q What happened after Mr. Foster and Mr. Hightower came to the barber shop and Mr. Willis went outside and spoke with him? Then what happened immediately after that?

A Well, later --

MR. HERWITZ: I object to that as leading, if your Honor please, the term "immediately after."

THE COURT: "If anything." Overruled.

A Later George had heroin and gave me about 20 capsules and I used it.

Q Can you tell us how much later?

A I guess probably five or ten minutes, you know, five minutes after. He was cutting somebody hair, had a customer in the chair and he completed the hair and then we went downstairs.

The Testimony Was Inadmissible

(a)

It should be noted initially that the testimony, as that testimony eventually came in (as opposed to how the Government had represented it would come in), was only valuable to the Government's case if George Willis in fact possessed no heroin capsules before seeing FOSTER and Hightower during the occurrence to which Tompkins testified.

For this reason, the Government, on three occasions, asked Tompkins whether or not prior to seeing FOSTER and Hightower, Willis had any heroin for her (Tr. 5771-5774). Obviously, no proper foundation had been laid for such a question, as the basis for Tompkins' knowledge of whether or not George Willis had heroin was never revealed. There was certainly never a showing that Tompkins had any personal knowledge, from observation or otherwise, that Willis had no heroin capsules prior to seeing FOSTER and Hightower.

Therefore, Tompkins' testimony to the effect that prior to seeing FOSTER and Hightower, Willis had no heroin was inadmissible as having been introduced without a proper (or any) foundation showing the basis of such

knowledge or belief. Federal Rules of Evidence, Rule 602.

(b)

If it is presumed that Tompkins was under the impression that Willis had no narcotics because Willis had told her that he didn't, the testimony would still have been inadmissible as hearsay within the meaning of the Federal Rules of Evidence, Rules 801(c) and 802, as such a statement was one "other than one made by the declarant while testifying at the trial . . . , offered in evidence to prove the truth of the matter asserted."

(c)

Because of the meager evidence offered by the Government to connect FOSTER with the conspiracy prior to May 1, 1971 (although it is not conceded that evidence of his connection subsequent to that date was any stronger), and the Government's strong reliance on Tompkins' testimony to corroborate Brown's testimony connecting FOSTER to the conspiracy prior to that date, it may be seen that the testimony of Tompkins herein complained of caused error highly prejudicial to FOSTER.

However, it should also be noted that the incident testified to by Tompkins allegedly occurred in 1968 and was improperly used by the Government on its summation to bolster Brown's testimony concerning an incident allegedly occurring in 1968 (see page 14, supra) and to thus negate the effect of FOSTER's defense, embodied in the stipulation quoted hereinabove at page 11. For these reasons, FOSTER's conviction should be reversed.

POINT II.

DEFENDANT-APPELLANT FOSTER
ADOPTS ALL RELEVANT POINTS
MADE BY HIS CO-APPELLANTS.

Defendant-appellant FOSTER hereby adopts all points made by his co-appellants on this appeal which the Court may find are relevant to him. Although, to avoid needless duplication, he has argued only one point herein which is specifically applicable to him (and to an extent, to the defendant-appellant Hightower), he wishes to call this Court's special attention to two points which will be made by certain of his co-appellants, insofar as they affect his appeal, namely that (1) all defendants were seriously prejudiced (and especially those represented by assigned counsel) by the trial court's refusal to permit

them the opportunity to explore Brown's credibility through the use of expert witnesses; and (2) the mass trial deprived each of the defendants of a fair trial in that the jury was seriously hampered thereby in weighing the evidence and the credibility of witnesses with respect to each defendant, leaving too much room for the possibility that the verdict as to each was based upon conjecture and compromise.

CONCLUSION

FOR ALL THE REASONS OUTLINED
ABOVE AND IN THE BRIEFS OF THE
CO-APPELLANTS, DEFENDANT-APPELLANT
FOSTER'S JUDGMENT OF CONVICTION
SHOULD BE REVERSED.

Dated: New York, N. Y.
April 13, 1977

Respectfully submitted,

VICTOR J. HERWITZ
Attorney for Defendant-
Appellant, SIDNEY FOSTER

* 3 Copies Received

Date APRIL 13, 1977

Firm U.S. ATTORNEY GENERAL

By M. Kowalewski - Cinn CLK.

